

California Competes Tax Credit Regulations  
Adopted August 18, 2014, as Emergency Regulations

10 CCR § 8000

**§ 8000. Definitions.**

For purposes of this article, the following definitions shall apply:

(a)(1) “Aggregate employee compensation” means the sum of the salaries for each new full-time employee employed in this state by the applicant, as determined pursuant to paragraph (2), for the first taxable year in which the agreement is effective and the four subsequent taxable years.

(2) The number of new full-time employees shall be determined on an annual full-time equivalent basis and shall be compared with the total number of full-time employees employed in this state by the applicant during the base year, determined on an annual full-time equivalent basis.

(b) “Aggregate investment” means the sum of the investment for the first taxable year in which the agreement is effective and the four subsequent taxable years.

(c) “Agreement” or “California competes tax credit agreement” means the agreement as negotiated between the applicant and GO-Biz prescribing the terms and conditions that must be met in order to award the applicant an allocation.

(d) “Allocation” means the portion of the allocated tax credit for the then-current fiscal year awarded by the committee to an applicant.

(e) “Allocation period” means the taxable years the credit requested by the applicant will be allowed.

(f) “Annual full-time equivalent” means either of the following:

(1) In the case of a full-time employee paid hourly wages, “annual full-time equivalent” means the total number of hours worked for the applicant by the employee during the taxable year, not to exceed 1,750 hours per employee, divided by 1,750.

(2) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the applicant by the employee during the taxable year, not to exceed 50, divided by 50.

(3) For purposes of this subdivision, the use of the term “worked” means the number of hours or weeks for which an employee receives paid wages including, but not be limited to paid vacation, sick leave, or holidays.

(g) “Applicant” means any taxpayer, including but not limited to an individual, corporation, or partnership, submitting a California competes tax credit application to GO-Biz for tax credit allocation consideration and must be a person or entity legally authorized to do business in California or that shall incorporate, qualify, or register with the Secretary of State to do business in California prior to the execution of the California competes tax credit agreement.

(h) “Application” means the request by an applicant for a tax credit allocation by submitting the information as specified in the application form.

(i) “Application form” means the California competes tax credit application form which shall contain the information requested in section 8030 and shall be available on the website.

(j) “Application period” means the period during a fiscal year designated by the director when applications shall be accepted, reviewed, and awarded.

(k) “Base year” means the 2013 taxable year, for an application submitted during the applicant's 2014 taxable year. In the case of an application submitted during the applicant's taxable year beginning on or after January 1, 2015, the base year means the taxable year immediately preceding the taxable year in which the application is submitted. The last day during an application period in which an applicant may submit an application shall be deemed the date an application is submitted for purposes of this subdivision. For applicants who first commence doing business in California during the taxable year in which an application is submitted, the number of full-time employees for the base year shall be zero.

(l) “Benefits” means health, medical, dental, and vision premiums paid by an applicant on behalf of any of the following:

(1) an employee;

(2) an employee's spouse;

(3) an employee's dependents.

(m) “California competes credit” or “credit” means the total amount of tax credit requested by an applicant in the application.

(n) “California competes tax credit committee” or “committee” means the committee established under Revenue and Taxation Code section 18410.2.

(o) "Current assets" means the value of all assets of the applicant that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses, and other liquid assets that can be readily converted to cash.

(p) "Current Liabilities" means the applicant's debts or obligations that are due within one year. Current liabilities appear on the applicant's balance sheet and include short-term debt (less than one-year), accounts payable, accrued liabilities and other debts.

(q) "Director" means the director of GO-Biz, or his or her designee.

(r) "Directly related" means actions, purchases, or the like made in connection with the project that would not have been otherwise purchased or incurred but for the project.

(s) "Economic impact" means the impact of a project or business on the state, a region, or locality, and may include, but not be limited to, the review of the type of industry, type of employment created, potential for growth, saturation in a particular market or saturation of a type of industry or employment in the state or a particular region or locality, direct, indirect, and induced employment creation, temporary employment and any other similar factors.

(t) "Fringe benefits" means any taxable or non-taxable amenity provided to the employee by the applicant including, but not limited to, group-term life insurance coverage, childcare and assistance reimbursement, employee discounts, personal use of a company owned vehicle, paid parking, public transportation supplement, gym subsidy, and education reimbursement.

(u) "Full-time employee" means an individual that is paid wages for services in this state of not less than an average of 35 hours per week.

(v) "GO-Biz" means the Governor's Office of Business and Economic Development.

(w) "Investment" means the amount paid for all personal property and real property directly related to the project that will be acquired or leased by the applicant after the deadline to submit an application during the application period.

(x) "Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's financial health and would be required to be referenced in the applicant's annual audited financial statements (if audited financial statements are required), or would be the type of information that is reported to shareholders, members, or similar individuals, or, in documents about the financial condition of the applicant, would be deemed material information that an investor or person providing any capital or investment in the entity would deem material in making a financial decision regarding the applicant.

(y) "Personal property" means property, other than real property, directly related to the project and placed in service in this state by the applicant, that is tangible, movable property, including, but not limited to, vehicles, movable fixtures, equipment, electronic devices purchased for the business use of the applicant, intangible property, including, but not limited to, software licenses, intellectual property acquired in connection with the project that has a quantifiable value, and other business assets which are subject to depreciation under Internal Revenue Code section 167(a), or depreciable property that will be expensed under Internal Revenue Code section 179.

(z) "Project" means the applicant's proposed business venture, investment, or expansion in this state that is the basis for the allocation.

(aa) "Project financing" means financing that the applicant may rely on to fund the project which may include, but not be limited to, loans through banks or other financial institutions, lines of credit, stock issuance, private equity, grants, venture capitalist investment, or any other form of financing.

(bb) "Real property" means any property located in this state that is attached directly to land, as well as the land itself, that is used in connection with the project. Real property includes, but is not limited to all, land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all other "interests" in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or lease), or an easement across another's property. With the exception of the land itself, real property includes structures and other business assets affixed to the land that are subject to depreciation under Internal Revenue Code section 167(a), or depreciable property expensed under Internal Revenue Code section 179. Real property also includes capitalized costs related to new construction, reconstruction, or expansion of buildings or other structures which will be used in the applicant's trade or business in connection with the project and will be subject to depreciation under Internal Revenue Code section 167(a) or is depreciable property that will be expensed under Internal Revenue Code section 179. Real property does not include idle bare land held for investment purposes.

(cc) "Salary" means the amount of monetary compensation a full-time employee is paid by the applicant per year and does not include tips, overtime, bonuses, benefits or other compensation of any kind.

(dd) "Small business" means a trade or business that has worldwide aggregate gross receipts, less returns and allowances reportable to this state, of greater than zero (\$0.00) but less than two million dollars (\$2,000,000) during the previous taxable year. "Gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in Revenue and

Taxation Code section 25120(a), and the gross receipts from the production of nonbusiness income, as defined in Revenue and Taxation code section 25120(d). For purposes of determining whether gross receipts exceed zero (\$0.00), only gross receipts arising from transactions and activity in the regular course of the applicant's trade or business shall be considered.

(ee) "Strategic importance" means the value of the type of business to be developed in the state or a particular region or locality due to lack of current presence of the type of business or industry, the assistance to the employment market or potential-employment pool, the growth of a particular region or locality, the will of the community to accept the business or industry, and any other similar factors.

(ff) "Website" means the GO-Biz website found at [www.business.ca.gov](http://www.business.ca.gov).

(gg) "Working capital" means the applicant's operating liquidity determined by subtracting the applicant's current liabilities from the applicant's current assets.

#### **§ 8010. Tax Credit.**

The applicant shall set forth its requested California competes credit amount in the application form. The minimum amount of such request shall be twenty thousand dollars (\$20,000) and the maximum amount shall be subject to the limitations set forth in Revenue and Taxation Code sections 17059.2 and 23689.

#### **§ 8020. Announcement of Application Deadlines and Committee Meetings.**

(a) The director shall announce the application period or periods for the California competes tax credit prior to each new fiscal year on the website.

(b) The announcement shall state:

(1) The application period(s);

(2) The deadline to submit applications for each application period;

(3) The dates when the committee will hold meetings to approve or reject agreements; and

(4) The tax credits available during each application period.

(c) The director may re-schedule or amend any previously announced application period, deadline to submit applications, and the total tax credits available during each

application period by providing notice on the website, and may re-schedule, relocate, or amend any previously announced committee meeting so long as the information is posted on the website at least ten days before the scheduled meeting.

(d) Any credits not awarded during the application period shall carry over to the next application period or later application period as specified in the announcement.

### **§ 8030. Application Process for Tax Credit Allocation.**

(a) In the event the director announces at the beginning of a fiscal year that applications must be submitted online, applicants shall create a login and password as designated on the website.

(b) Applicants shall be asked to provide some or all of the following information as directed on the application form, which may be divided into multiple phases:

(1) Applicant or entity name (legal name and any other doing business as names), including the type of legal entity;

(2) State of incorporation or organization, if applicable;

(3) Entity Identification Number: California Corporation Number, California Secretary of State Entity Identification Number, Federal Employer Identification Number, Social Security Number;

(4) Contact information (address, contact person, phone numbers, e-mail address);

(5) Amount of California competes tax credit requested;

(6) Proposed timeframe for when applicant would like the California competes credit to be provided (i.e. over which taxable years the credit would be allowed);

(7) Certification whether applicant qualifies as a small business;

(8) Consultant, attorney, tax practitioner or any other third party (hereinafter referred to collectively as "consultant") preparing or submitting the application, or providing any services related to the credit, name and contact information (address, contact person, phone numbers, e-mail address), if applicable;

(9) Consultant company Identification Number, if applicable: California Corporation Number, California Secretary of State Entity Identification Number, Federal Employer Identification Number, Social Security Number;

- (10) Describe consultant cost of services fee structure and disclose whether payment to consultant is influenced by whether a credit is awarded;
- (11) Cost of services for consultant;
- (12) Identify parent company, if applicable;
- (13) Identify whether applicant is publicly traded;
- (14) Identify affiliated corporations as defined in Internal Revenue Code Section 1504, if applicable;
- (15) If the applicant has an affiliated corporation, identify the percentage of the affiliated corporation owned by the applicant, or the percentage of the applicant owned by its affiliated corporation;
- (16) Names of any person authorized by applicant to communicate with GO-Biz and contact information (address, contact person, phone numbers, email address);
- (17) List of entities or persons with at least 25% ownership in the applicant, the amount of the percentage and identify the relationship with applicant (e.g., management, investment);
- (18) Applicant's North American Industry Classification System ("NAICS") Code;
- (19) Proposed project NAICS Code;
- (20) Year applicant's business established;
- (21) Date applicant commenced or will commence business in California;
- (22) Location of applicant's headquarters;
- (23) Number of full-time and part-time employees in California;
- (24) Number of full-time and part-time employees in the United States (list states and number of employees in each state);
- (25) Number of full-time and part-time employees worldwide;
- (26) If applicable, provide an entity relationship chart, including all operations out of the state and in California and the number of employees in each entity;
- (27) Description of proposed project, including whether it is for business growth, retention, or relocation, whether any increase of employees or investment by the applicant is due to an acquisition of, or merger with, another business, or whether any increase of employees is due to any employee leasing arrangement with another

business or conversion of employees performing services for the applicant employed by a temporary services business, or whether any increase of employees is due to a transfer of employees from a “controlled group of corporations” (as defined in Revenue and Taxation Code section 23626) in which the applicant is a member of;

(28) Describe any loss of full-time employment associated with project and reasons there will be employment losses in connection with the project either in California or out of state;

(29) Location and number of full-time employees affected by the project (additions, consolidations, or lay-offs) and the location, number and nature of part-time employees employed or that will be employed the applicant;

(30) Describe project timeline;

(31) Describe whether any permits are needed for the project and whether they are approved, pending, or are yet to be applied for;

(32) Describe project financing, if applicable, and whether provided by venture capital, banking institution, other grants, private equity, or other type of financing structure;

(33) Working capital available for project;

(34) Provide additional information about funding and expected costs that have not yet been requested and that applicant deems would be material to share on the application;

(35) Number of new full-time employees, determined on an annual full time equivalent basis, to be employed by the applicant for each taxable year over five taxable years;

(36) Aggregate employee compensation;

(37) Type of full-time employment to be created (educational, manual labor, engineering, entry-level, managerial, etc.);

(38) Average and minimum hourly wage or salary for each classification of full-time employee proposed to be hired or retained;

(39) Description and average value of benefit and fringe benefit for each classification of full-time employee proposed to be hired or retained, including the type of, and amount contributed to, any employee retirement plan and the amount of health care benefit premium employees are required to pay and the average costs employees pay versus the amount paid by the health care plan;

(40) Date of anticipated hire of full-time employees;

(41) Aggregate investment;



(42) Disclose whether applicant is looking at relocating to another state;

(43) Disclose if applicant expects to claim the New Employment Credit under Revenue and Taxation Code sections 17053.74 or 23626, and the estimated amount of credit to be claimed during each applicable taxable year;

(44) Disclose if applicant expects to utilize the Sales Tax Exemption under Revenue and Taxation Code section 6377.1 and the estimated amount of exemption for each applicable taxable year;

(45) Disclose any other incentives or credits available or offered to the applicant in the state, including state, local, and other entities;

(46) Disclose and describe any material litigation, any pending or resolved California Environmental Quality Act litigation relating to the project, any pending or resolved litigation, violations, citations, fines, or penalties relating to any state or federal labor law offenses within the last 10 years, any pending or resolved litigation, violations, citations, fines, or penalties relating to any state or federal occupational safety and health offenses within the last 10 years, any pending or resolved local, regional, state or federal environmental (including but not limited to air, water and ground) litigation, violations, citations, fines, or penalties within the last 10 years; all of which not only involving the applicant but any person or entity with a 25% or greater ownership interest in the applicant;

(47) Certify applicant and any person or entity with a 25% or greater ownership interest in the applicant does not owe any delinquent Federal, California or any other state tax liabilities, or is in an approved installment agreement with the respective tax agency and disclose any outstanding or resolved federal, California, or any other state tax liens recorded against the applicant, or any person or entity with a 25% or greater ownership interest in the applicant, within the last 10 years.

(c) Applications shall be completed by using the application form designated by the director at the beginning of each fiscal year, which may require applications be submitted in paper or electronic form.

(d) In all applications, the applicant must represent and warrant that all statements in the application are true and complete to the best of the applicant's knowledge. Such representation and warranty must be made by a person who is most knowledgeable of the project. The applicant may be required to certify any information provided in the application by written, electronic signature, or the equivalent.

(e) Any information submitted to GO-Biz that the applicant considers to be a trade secret, confidential, privileged or otherwise exempt from disclosure under the Public

Records Act (California Government Code section 6250, et seq.) shall not be publically disclosed by GO-Biz unless it is required to do so by court order or applicable law. An applicant shall assert a claim of exemption by identifying each of the items to be restricted and the section of law that provides for the exemption (e.g., Government Code section 6254.15) at the time its application form is submitted to GO-Biz. In the event GO-Biz is required to publically disclose information identified by the applicant as a trade secret, confidential, privileged, or otherwise exempt from disclosure, GO-Biz shall notify the applicant at least five (5) business days prior to the release of such information in order to allow the applicant to seek an injunction, as applicable, unless a court order or the equivalent prevents such timely notice,

(f) Based on the information requested in the application, GO-Biz shall implement a two-phase review process.

(g)(1) Phase I. Phase I is an automated phase in which the applicant's amount of tax credit requested, aggregate employee compensation, and aggregate investment provided on the application form shall be evaluated to determine the rate of return. The aggregate employee compensation shall be added to the aggregate investment and the sum of these two numbers will be the total proposal by the applicant. The amount of the California competes credit requested by the applicant shall be divided by the total proposal to create the cost-benefit ratio of the credit requested to total proposal provided. Each applicant shall be listed according to the lowest percentage of the cost-benefit ratio, with the lowest percentage being positioned the highest and so forth. Based on this order, GO-Biz shall then work down the list and engage the most competitive applicants to move forward to Phase II, specifically including a pooled review of the most competitive applicants whose aggregate California competes credit requested is at least two hundred percent of the tax credit available for the application period. For example, if the amount of tax credit available in an application period is \$30 million, GO-Biz will review the most competitive applicants whose aggregate California competes credit requested is at least \$60 million. Notwithstanding the foregoing, GO-Biz may move an applicant to Phase II if the owner, president, chief executive officer, chief financial officer, or other equivalent person of the applicant certifies in writing to GO-Biz that, absent award of the tax credit, the project will occur in another state or the applicant will terminate all or a portion of its employees in this state or will relocate all or a portion of its employees in this state to another state.

(2) Phase II. GO-Biz shall evaluate the applicants moved into Phase II based on the following factors:

(A) Extent of unemployment or poverty in the area according to the United States Census in which the applicant's project is proposed or located, as supplemented by the information provided by California's Employment Development Department on

<http://www.labormarketinfo.edd.ca.gov/> or the equivalent website, as it may change from time to time;

(B) Whether incentives are available to the applicant in other states and the incentives available to the applicant in this state, including the utilization of such incentives in this state;

(C) Economic impact in the state;

(D) Strategic importance of the applicant's project or business in the state, region or locality;

(E) Number of existing employees expected to be retained in California related to the project;

(F) Opportunity for future growth and expansion in the state;

(G) The salary, benefits and fringe benefits provided by the applicant to its employees;

(H) Any other information requested in the application; including, but not limited to, the fee arrangement between the applicant and any consultant, attorney, tax practitioner or any other third party that prepared or submitted the application, or provided any services related to the credit. Any contingent fee arrangement must result in a fee that is less than or equal to the product of the number of hours of service provided to the applicant and a reasonable hourly rate for such services.

(3) GO-Biz may request financial statements and other relevant business documents related to the project in Phase II to confirm or verify any information provided in the application.

(h) Readiness and site control. Depending on the type of project submitted by an applicant, if readiness and site control are factors in the evaluation as to whether a tax credit will be awarded, site control may be evidenced by any of the following:

(1) Fee title held by applicant;

(2) Executed lease agreement or lease option;

(3) Executed development agreement;

(4) Valid purchase and sale agreement or contingent purchase and sale agreement, or lease, or the equivalent.

(i) Evidence. GO-Biz shall ask an applicant to provide supplemental information that substantiates the information provided in the application, as needed. The applicant may be asked to submit the information electronically or in hard-copy as designated by GO-

Biz. Upon review of such documentation, if GO-Biz determines that documentation is insufficient to support the information provided in the application, GO-Biz shall request that the applicant provide additional information. If the applicant fails to provide the additional information to the satisfaction of GO-Biz, GO-Biz shall place the application on hold until the appropriate documentation is provided or until the then-current application period expires.

(j) Amending and withdrawal of an application. If an applicant intends to revise a portion of a previously submitted application form, the applicant shall notify GO-Biz via the website and either withdraw the application and submit a new one or provide an amendment to the existing application. An applicant may amend an application form at any time until the last day for applications to be submitted during the application period. An applicant may withdraw an application at any time prior to committee approval by submitting a request for application withdrawal on the website.

(k) Negotiation. At the discretion of GO-Biz, GO-Biz may contact the applicant to schedule telephone conferences, video conferences, in-person meetings, or other similar types of communication to negotiate the terms and conditions of the tax credit agreement. Negotiations will be based on the following factors:

- (1) The number of employment positions applicant will create or retain in this state.
- (2) The compensation paid or proposed to be paid by the applicant to its employees, including wages, benefits, and fringe benefits.
- (3) The amount of investment in this state by the applicant.
- (4) The extent of unemployment or poverty in the area according to the United States Census in which the applicant's project or business is proposed or located, as supplemented by the information provided by California's Employment Development Department on <http://www.labormarketinfo.edd.ca.gov/> or the equivalent website, as it may change from time to time.
- (5) The incentives available to the applicant in this state, including incentives from the state, local government, and other entities.
- (6) The incentives available to the applicant in other states.
- (7) The duration of the proposed project and the duration the applicant commits to remain in this state.
- (8) The economic impact in this state of the applicant's project or business.
- (9) The strategic importance of the applicant's project or business to the state, region, or locality.

(10) The opportunity for future growth and expansion in this state by the applicant's business.

(11) The extent to which the anticipated benefit to the state exceeds the projected benefit to the applicant from the tax credit.

(l) If any quantifiable information (e.g., number of employees) provided by the applicant in Phase I is reduced by more than five percent during negotiations, GO-Biz may reject the application.

(m) Pending applications shall not be eligible for a tax credit. Application shall be deemed pending if any information requested by GO-Biz is not provided within the requested timeframe or GO-Biz and applicant fail to reach an agreement. GO-Biz shall notify applicants of a pending application that, if not cured, shall not be considered for an allocation until the deficiency is cured.

(n) If an applicant is not awarded any allocation in the then-current application period and the applicant would like its application to be considered in the next application period of that fiscal year, the applicant shall revise its application during the subsequent application period to update its investment and hiring commitments in addition to any other revisions necessary, such as its current taxable year and base year, as a result of the applicant's taxable year ending after the last day to submit an application during the prior application period.

(o) Upon commencement of a new fiscal year, any application submitted in the prior fiscal year and not awarded during the prior fiscal year shall expire. Applicants shall submit a new application for consideration during the next application period of the then-current fiscal year.

#### **§ 8040. Notice to and Duties of the Franchise Tax Board.**

(a) Upon approval by the committee, GO-Biz shall provide the negotiated agreements to the Franchise Tax Board in the form and manner agreed to by the Franchise Tax Board and GO-Biz. The Franchise Tax Board shall also have access to the application and any and all documentation provided by the applicant or prepared or relied on by GO-Biz or the committee in the decision to approve the agreement and allocate a credit. The Franchise Tax Board shall also have access to any and all information and documentation provided by the applicant after a credit is allocated.

(b) Pursuant to Revenue and Taxation Code sections 17059.2(d) and 23689(d), for any business other than a small business, the Franchise Tax Board shall review the books and records of all applicants allocated a credit pursuant to the agreement to ensure

compliance with the terms and conditions of the agreement between the applicant and GO-Biz.

(c) In the case of an applicant that is a small business, a review of the books and records of the applicant may be made when, in the sole discretion of the Franchise Tax Board, a review of those books and records is appropriate or necessary in the best interests of the state. If the Franchise Tax Board exercises its discretion to review the books and records of an applicant that is a small business, the review shall be conducted to ensure compliance with the terms and conditions of the written agreement between the applicant and GO-Biz.

(d) The form and manner of the review of the books and records to ensure compliance with the terms of the agreement shall be at the sole discretion of the Franchise Tax Board. These reviews will not be treated as an audit of the tax return under Part 10.2 (commencing with section 18401) of the Revenue and Taxation Code and the regulations thereunder, and will not preclude the Franchise Tax Board from auditing any issue in any taxable year, including a taxable year included in the term of the agreement.

(e) If during the review of the books and records, Franchise Tax Board determines there is a possible material breach of the written agreement by the applicant, the Franchise Tax Board shall notify GO-Biz and provide detailed information regarding the basis for that determination.

(f) Upon approval by the committee to recapture a credit, GO-Biz shall provide the terms and amount of recapture to the Franchise Tax Board in the form and manner agreed to by the Franchise Tax Board and GO-Biz.